

1 JOHN A. O'MALLEY (Bar No. 101181)
2 **FULBRIGHT & JAWORSKI LLP**
3 555 South Flower Street
4 Forty-First Floor
5 Los Angeles, California 90071
6 Telephone: (213) 892-9200
7 Facsimile: (213) 892-9494
8 john.omalley@nortonrosefulbright.com

9 DAN D. DAVISON (*admitted pro hac vice*)
10 MARC L. DELFLACHE (*admitted pro hac vice*)
11 **FULBRIGHT & JAWORSKI LLP**
12 2200 Ross Avenue, Suite 2800
13 Dallas, Texas 75201
14 Telephone: (214) 855-8000
15 Facsimile: (214) 855-8200
16 dan.davison@nortonrosefulbright.com
17 marc.delflache@nortonrosefulbright.com

18 RICHARD S. ZEMBEK (*admitted pro hac vice*)
19 **FULBRIGHT & JAWORSKI LLP**
20 1301 McKinney, Suite 5100
21 Houston, Texas 77010
22 Telephone: (713) 651-5151
23 Facsimile: (214) 651-5246
24 richard.zembek@nortonrosefulbright.com

25 Attorneys for Defendants, PAPA JOHN'S USA, INC.,
26 EXPEDIA, INC., FANDANGO, INC., HOTEL TONIGHT,
27 INC., HOTELS.COM, L.P., HOTWIRE, INC., KAYAK
28 SOFTWARE CORPORATION, LIVE NATION, INC.,
MICROS SYSTEMS, INC., ORBITZ, LLC, STUBHUB,
INC., TICKETMASTER, LLC, TRAVELOCITY.COM LP,
WANDERSPOT LLC, AND OPENTABLE, INC.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE: AMERANTH PATENT
LITIGATION CASES

Civil Action No. 3:11-cv-01810-
DMS-WVG

**DEFENDANTS'
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO
STAY UNDER SECTION 18(B)
OF THE LEAHY-SMITH
AMERICA INVENTS ACT**

Date: December 13, 2013
Time: 1:30 p.m.
Location: Courtroom 13A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Judge: Hon. Dana M. Sabraw
**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**
TRIAL BY JURY DEMANDED

TABLE `OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND	5
A. The Litigation.....	5
B. The Parties.....	5
C. The CBM Petitions.....	5
III. LEGAL STANDARD	9
IV. ARGUMENT	10
A. A Stay Will Inevitably Simplify Or Eliminate Issues For The Court And The Parties.....	10
B. This Case Is Still At An Early Stage.....	11
C. A Stay Will Not Unduly Prejudice Ameranth Or Afford The Defendants A Clear Tactical Advantage	12
D. A Stay Will Reduce The Burden Of Litigation On The Parties And The Court	14
V. CONCLUSION AND RELIEF REQUESTED	16

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Accenture Global Servs., GMBH v. Guidewire Software, Inc.</i> , No. 2011-1486, 2013 WL 4749919 (Fed. Cir. Sept. 5, 2013)	7
<i>Bancorp Servs., LLC v. Sun Life Assurance Co. of Canada</i> , 687 F.3d 1266 (Fed. Cir. 2012)	7
<i>CLS Bank Int'l v. Alice Corp. Pty. Ltd.</i> , 717 F.3d 1269 (Fed. Cir. 2013)	7
<i>Compression Tech. Solutions LLC v. EMC Corp.</i> , 2013 WL 2368039 (N.D. Cal. May 29, 2013)	7
<i>CyberSource Corp. v Retail Decisions, Inc.</i> , 654 F.3d 1366 (Fed. Cir. 2011)	7
<i>EchoStar Techs. Corp. v. Tivo, Inc.</i> , No. 5:05-cv-81, 2006 U.S. Dist. LEXIS 48431 (E.D. Tex. July, 14 2006)	12
<i>IPXL Holdings, LLC v. Amazon.com, Inc.</i> , 430 F.3d 1377 (Fed. Cir. 2005)	8
<i>In re Katz Interactive Call Processing Patent Litig.</i> , 639 F.3d 1303 (Fed. Cir. 2011)	8
<i>Market-Alerts Pty. Ltd. v. Bloomberg Fin. L.P.</i> , No. 1:12-cv-00780-GMS, 2013 U.S. Dist. LEXIS 15300 (D. Del. Feb. 5, 2013)	passim
<i>Microline, LLC v. Intel Corp.</i> , No. 2:07-cv-488, 2010 U.S. Dist. LEXIS 99255 (E.D. Tex. Sept. 20, 2010)	14
<i>Progressive Cas. Ins. Co. v. Safeco Ins. Co.</i> , No. 1:10-cv-01370-BYP, 2013 U.S. Dist. LEXIS 54899 (N.D. Ohio Apr. 17, 2013)	3, 11, 13
<i>Rembrandt Data Techs., LP v. AOL, LLC</i> , 641 F.3d 1331 (Fed. Cir. 2011)	8
<i>SenoRx, Inc. v. Hologic, Inc.</i> , No. CIV. A. 12-173-LPS-CJB, 2013 U.S. Dist. LEXIS 8044 (D. Del. Jan. 11, 2013)	13
<i>Sightsound Techs. LLC v. Apple, Inc.</i> , No. 2:11-cv-01292-DWA, 2013 U.S. Dist. LEXIS 79319 (W.D. Penn. June 6, 2013)	3, 4, 9, 10, 12, 15

1	<i>Versata Software, Inc. v. Volusion, Inc.</i> ,	
2	No. 1:12-cv-00893-SS, ECF No. 53 (W.D. Tex. June 20, 2013)	passim
3	<i>Zillow, Inc. v. Trulia, Inc.</i> ,	
4	No. C12-1549JLR, 2013 U.S. Dist. LEXIS 144919 (W.D. Wash. Oct. 7, 2013)	3, 10, 12

STATUTES

5	35 U.S.C. § 101	4, 5, 6, 7, 15
6	35 U.S.C. § 112	5, 8
7	Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 18(b), Stat. 284	
8	(2011)	3, 6, 9, 11

OTHER AUTHORITIES

9		
10	157 CONG. REC. S1053 (daily ed. Mar. 1, 2011)	2, 3, 14
11	157 CONG. REC. S1363 (daily ed. Mar. 8, 2011)	2, 3, 9, 14
12	157 CONG. REC. S5408 (daily ed. Sept. 8, 2011)	2
13	77 Fed. Reg. 48,756	6, 9, 13
14	77 Fed. Reg. 48,768	6
15	MPEP § 2173.05	8
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

I. INTRODUCTION

All Defendants bring this motion to stay. Defendants Expedia, Inc., Fandango, Inc., Hotel Tonight Inc., Hotwire, Inc., Hotels.com, L.P., Kayak Software Corporation, Live Nation Entertainment, Inc., Micros Systems, Inc., Orbitz, LLC, OpenTable, Inc., Papa John's USA, Inc., Stubhub, Inc., TicketMaster, LLC, Travelocity.com LP, Wanderspot LLC, Pizza Hut, Inc., Pizza Hut of America, Inc., Domino's Pizza, Inc., Domino's Pizza, LLC, Grubhub, Inc., Seamless North America, LLC, Ordri.in., Inc., Mobo Systems, Inc., Starbucks Corporation, Eventbrite, Inc., Best Western International, Inc., Hilton Resorts Corporation, Hilton Worldwide, Inc., Hilton International Co., Hyatt Corporation, Marriott International, Inc., Starwood Hotels & Resorts Worldwide, Inc., Agilysys, Inc., Usablenet, Inc., and Apple Inc. (collectively, the "Petitioning Defendants") filed petitions with the Patent Trial and Appeal Board ("PTAB") of the United States Patent and Trademark Office ("USPTO") on October 15, 2013, seeking review of the validity of Ameranth, Inc.'s ("Ameranth") patents under the Transitional Program for Covered Business Method ("CBM") Patents.¹ The Petitioning Defendants' CBM petitions challenge the validity of every claim of Ameranth's U.S. Patent Nos. 6,384,850 ("the '850 Patent")², 6,871,325 ("the '325

¹ Defendants O-Web Technologies Ltd., QuikOrder, Inc., TicketBiscuit, LLC, Ticketfly, Inc., and ATX Innovation, Inc. did not join the petition for CBM review, but join the motion to stay in the interests of judicial economy and to avoid potentially inconsistent rulings.

² Expedia, Inc., Fandango, Inc., Hotel Tonight Inc., Hotwire, Inc., Hotels.com, L.P., Kayak Software Corporation, Live Nation Entertainment, Inc., Micros Systems, Inc., Orbitz, LLC, OpenTable, Inc., Papa John's USA, Inc., Stubhub, Inc., TicketMaster, LLC, Travelocity.com LP, Wanderspot LLC, Pizza Hut, Inc., Pizza Hut of America, Inc., Domino's Pizza, Inc., Domino's Pizza, LLC, Grubhub, Inc., Seamless North America, LLC, Ordri.in., Inc., Mobo Systems, Inc., Starbucks Corporation, Eventbrite, Inc., Best Western International, Inc., Hilton Resorts Corporation, Hilton Worldwide, Inc., Hilton International Co., Hyatt Corporation, Marriott International, Inc., Starwood Hotels & Resorts Worldwide, Inc., Agilysys, Inc., Usablenet, Inc., and Apple Inc. collectively filed a CBM petition on October 15, 2013, challenging the validity of every claim of the '850 Patent. (**Exhibit 1**); Petitioners' Address List (**Exhibit 2**).

53033132.23

Patent”)³, 8,146,077 (“the ’077 Patent”)⁴, and 6,982,733 (“the ’733 Patent”).⁵ The America Invents Act provides this new administrative review proceeding “to help cut back on the scourge of business method patents that . . . apply not to novel products or services but to abstract and often very common concepts of how to do business” so that “businesses acting in good faith do not have to spend the millions of dollars it costs to litigate a business method patent in court.” 157 CONG. REC. S5409 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer) (**Exhibit 6**); *see also* 157 CONG. REC. S1053–54 (daily ed. Mar. 1, 2011) (statement of Sen. Schumer) (**Exhibit 7**). The CBM review program, which became available on September 16, 2012, was created with the intention of being “a cheaper, faster alternative to district court litigation over the validity of business-method patents.” 157 CONG. REC. S1363-64 (daily ed. Mar. 8, 2011) (statement of Sen. Schumer) (**Exhibit 8**).

In furtherance of Congress’s objective to decrease the cost of litigation and

³Expedia, Inc., Fandango, Inc., Hotel Tonight Inc., Hotwire, Inc., Hotels.com, L.P., Kayak Software Corporation, Live Nation Entertainment, Inc., Micros Systems, Inc., Orbitz, LLC, OpenTable, Inc., Papa John’s USA, Inc., Stubhub, Inc., TicketMaster, LLC, Travelocity.com LP, Wanderspot LLC, Pizza Hut, Inc., Pizza Hut of America, Inc., Domino’s Pizza, Inc., Domino’s Pizza, LLC, Grubhub, Inc., Seamless North America, LLC, Ordri.in., Inc., Mobo Systems, Inc., Starbucks Corporation, Eventbrite, Inc., Best Western International, Inc., Hilton Resorts Corporation, Hilton Worldwide, Inc., Hilton International Co., Hyatt Corporation, Marriott International, Inc., Starwood Hotels & Resorts Worldwide, Inc., Agilysys, Inc., Usablenet, Inc., and Apple Inc. collectively filed a CBM petition on October 15, 2013, challenging the validity of every claim of the ’325 Patent. (**Exhibit 3**).

⁴Expedia, Inc., Fandango, Inc., Hotel Tonight Inc., Hotwire, Inc., Hotels.com, L.P., Kayak Software Corporation, Live Nation Entertainment, Inc., Micros Systems, Inc., Orbitz, LLC, OpenTable, Inc., Papa John’s USA, Inc., Stubhub, Inc., TicketMaster, LLC, Travelocity.com LP, Wanderspot LLC, Pizza Hut, Inc., Pizza Hut of America, Inc., Domino’s Pizza, Inc., Domino’s Pizza, LLC, Grubhub, Inc., Seamless North America, LLC, Ordri.in., Inc., Mobo Systems, Inc., Starbucks Corporation, Eventbrite, Inc., Best Western International, Inc., Hilton Resorts Corporation, Hilton Worldwide, Inc., Hilton International Co., Hyatt Corporation, Marriott International, Inc., Starwood Hotels & Resorts Worldwide, Inc., Agilysys, Inc., Usablenet, Inc., and Apple Inc. collectively filed a CBM petition on October 15, 2013, challenging the validity of every claim of the ’077 Patent. (**Exhibit 4**).

⁵Fandango, Inc., OpenTable, Inc., Apple Inc., Domino’s Pizza, Inc., and Domino’s Pizza, LLC collectively filed a CBM petition on October 15, 2013, challenging the validity of every claim of the ’733 Patent. (**Exhibit 5**).

streamline challenges to business method patents, the CBM review provision of the AIA expressly permits—and in fact, encourages—a stay of district court cases relating to challenged patents. *See* Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 18(b), Stat. 284, 329-31 (2011). Congress found it “nearly impossible” to imagine a scenario in which a district court would not issue a stay during a CBM review. 157 CONG. REC. S1053. “Absent some *exceptional circumstance*, the institution of a business-methods proceeding . . . should serve as a substitute for litigation, and result in a stay of co-pending district court litigation.” 157 CONG. REC. S1364 (emphasis added); *see also id.* at S1363 (“It is congressional intent that a stay should only be denied in *extremely rare instances*.”) (emphasis added). As further evidence that Congress intended for a CBM-based stay to be denied in only rare instances, the AIA allows for “an immediate interlocutory appeal” to the Federal Circuit of any decision denying a motion to stay the litigation. AIA § 18(b)(2).

Consistent with Congress’s intent, nearly every district court confronted with this issue has granted a motion to stay pending resolution of CBM review. *See, e.g., Versata Software, Inc. v. Volusion, Inc.*, No. 1:12-cv-00893-SS, ECF No. 53 (W.D. Tex. June 20, 2013) (granting motion to stay pending resolution of CBM review) (**Exhibit 9**).⁶ Courts have liberally granted such motions, including in cases where (1) claim construction proceedings have already passed, *Sightsound*,

⁶ *See also Zillow, Inc. v. Trulia, Inc.*, No. C12-1549JLR, 2013 U.S. Dist. LEXIS 144919 (W.D. Wash. Oct. 7, 2013) (granting motion to stay pending CBM review); *Sightsound Techs. LLC v. Apple, Inc.*, No. 2:11-cv-01292-DWA, 2013 U.S. Dist. LEXIS 79319 (W.D. Penn. June 6, 2013) (granting motion to stay pending CBM review); *Pi-Net Int’l, Inc. v. Citizens Fin. Group, Inc.*, No. 1:12-cv-00355-RGA, ECF No. 82 (D. Del. Apr. 24, 2013) (granting motion to stay pending CBM review) (**Exhibit 10**); *Progressive Cas. Ins. Co. v. Safeco Ins. Co.*, No. 1:10-cv-01370-BYP, 2013 U.S. Dist. LEXIS 54899 (N.D. Ohio Apr. 17, 2013) (granting motion to stay pending CBM review); *Frontline Techs., Inc. v. CRS, Inc.*, No. 2:07-cv-02457-ER, ECF No. 183 (E.D. Penn. Feb. 19, 2013) (granting motion to stay pending CBM review) (**Exhibit 11**); *Market-Alerts Pty. Ltd. v. Bloomberg Fin. L.P.*, No. 1:12-cv-00780-GMS, 2013 U.S. Dist. LEXIS 15300 (D. Del. Feb. 5, 2013) (granting motion to stay pending CBM review).

1 2013 U.S. Dist. LEXIS 79319, at *8–13, (2) the USPTO had not yet granted the
 2 defendant’s CBM petition, *Market-Alerts*, 2013 U.S. Dist. LEXIS 15300, at *7 n.5,
 3 and (3) the defendant’s CBM petition asserted a single ground of invalidity,
 4 *Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 6 (granting a stay where
 5 CBM petition challenged patent only under 35 U.S.C. § 101 only). Indeed, the vast
 6 majority of courts confronted with this issue have acknowledged Congress’s clear
 7 preference by staying cases pending completion of CBM reviews. *Versata*
 8 *Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 6 (“The AIA represents a clear
 9 decision by Congress to increase involvement of the PTAB in patent litigation
 10 while simultaneously decreasing the involvement of the courts.”).

11 In light of recent judicial and congressional preference for a stay, the Court
 12 should stay this action pending resolution of CBM review of the ’850, ’325, ’733,
 13 and ’077 Patents. The factors of the AIA’s statutory stay provision heavily favor a
 14 stay. CBM review of the ’850, ’325, ’733, and ’077 Patents is likely to simplify
 15 issues for this Court and may well eliminate this case altogether. This litigation is
 16 still in the relatively early stages. Ameranth will not be unduly prejudiced by a
 17 stay. A stay would also reduce the burden on the parties and the Court by
 18 preventing parallel proceedings, conserving the Court’s and the parties’ resources,
 19 and avoiding issues that may be moot after CBM review. In short, this is not an
 20 exceptional case where a stay should be denied. Instead, with all claims of all
 21 patents challenged, 36 defendants and suits impacted, the early stage of the judicial
 22 proceedings, and the valuable resources of the Court and the parties which may be
 23 saved, it is the very type of case that the legislature intended be stayed pending
 24 CBM review. Consequently, all Defendants file this memorandum in support of
 25 their motion to stay, in accordance with the Court’s prior order. *In Re: Ameranth*
 26 *Patent Litigation Cases*, No. 3:11-cv-01810-DMS-WVG, ECF No. 491, at 2 (S.D.
 27 Cal. Sept. 13, 2013).

II. FACTUAL BACKGROUND

A. The Litigation

The litigation is in its early stage. Discovery is not complete, and the deadline to complete claim construction related discovery is August 18, 2014. *Id.* There is currently no deadline to complete fact discovery in general, and the parties have not taken any depositions. Indeed, all non-claim construction discovery is currently stayed. *See Ameranth, Inc. v. Pizza Hut, Inc.; Et Al.*, No. 3:11-cv-01810-DMS-WVG, ECF No. 468 (S.D. Cal. Aug. 29, 2013) (Gallo, J.).

Defendants have not served invalidity contentions, and these are due on March 31, 2014. *Id.* In fact, the Court has determined that plaintiff has yet to serve infringement contentions that comply with the Local Rules. *See In re: Ameranth Patent Litigation Cases*, No. 3:11-cv-01810-DMS-WVG, ECF No. 513 (S.D. Cal. Oct. 10, 2013) (Sabraw, J.). The Markman hearing is scheduled for November 3, 2014, and the parties' claim construction briefs are due on September 22, 2014. *Id.* Moreover, the Court has not set a trial date.

B. The Parties

Ameranth does not directly compete with any of the Defendants in this litigation. Ameranth does not make or sell any product in the following industries as described by Ameranth in referencing this litigation: (1) "hotel chains;" (2) on-line "travel aggregators;" (3) on-line "ticketing companies;" and (4) "restaurant point of sale, and/or reservations, and/or online/mobile ordering companies." (**Exhibit 12**).

C. The CBM Petitions

On October 15, 2013, Petitioning Defendants filed their CBM petitions, challenging the validity of all claims of the '850, '325, '733, and '077 Patents under 35 U.S.C. §§ 101, 112 (1994). (**Exhibits 1, 3-5**). CBM review is subject to a strict timeline. The PTAB will determine within six months whether to grant review of

the '850, '325, '733, and '077 Patents, which is a decision that will turn on whether the PTAB believes it to be more likely than not that at least one claim of each of the '850, '325, '733, and '077 Patents is unpatentable. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,757, 48,765 (Aug. 14, 2012) (to be codified at 37 C.F.R. pt. 42) (**Exhibit 14**) (affording a patent owner three months to respond to a CBM petition and affording the PTAB three months following the patent owner's response to decide whether to grant review). The PTAB will determine whether each of the Patents-in-Suit meets the definition of a covered business method patent because at least one claim is financial in nature and the patent is not directed to a "technological invention." See AIA § 18(d)(1) (The AIA defines a covered business method patent as "a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.") If the PTAB grants review, the review must conclude (culminating in what is sometimes referred to a trial before the PTAB) within one year of the decision granting the review per the statute.⁷ *Id.* at 48,765 (requiring the PTAB's scheduling order to set a completion date within one year of granting the CBM review).

According to the CBM petitions, the Challenged Claims cover nothing more than an abstract idea of generating menus or the abstract idea of placing an order or reservation using a general purpose computer and wireless handheld device, and, therefore, they fail to satisfy the patent eligibility requirement of 35 U.S.C. § 101. The claims are described as merely directed to a general purpose computer using general purpose programming, which merely adds anticipated benefits of computerization; *i.e.*, speed and efficiency. See *e.g.*, '850 CBM Petition, **Exhibit 1**,

⁷ Upon a showing of "good cause," the PTAB can extend a review for an additional six months. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,768 (**Exhibit 14**).

at 63 (citing the patent specification describing the prior art methods as “slow” and “unacceptable for the time criticality of ordering” whereas the computerized method facilitates “user-friendly and efficient generation of computerized menus” to allow for “fast and automatic synchronization” and “real-time communication over the internet”). The CBM Petitions explain that the Challenged Claims fail the “machine-or-transformation” test because they are not “tied to a particular machine or apparatus,” nor do they “transform a particular article into a different state or thing.” *See e.g.*, ’850 CBM Petition, **Exhibit 1**, at 69, 71. Merely appending computer-aided limitations to an abstract idea does not make it patentable. *See e.g.*, ’850 CBM Petition, **Exhibit 1**, at 9; *see also CyberSource Corp. v Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (finding recitation of a computer or computer hardware is not sufficient to confer patent eligibility to an abstract process); *Compression Tech. Solutions LLC v. EMC Corp.*, 2013 WL 2368039, at *8 (N.D. Cal. May 29, 2013) (“Simply adding a label like ‘computer aided’ or vague references to calculations or ‘digital storage’ will not render an otherwise abstract idea patent eligible”); *Accenture Global Servs., GMBH v. Guidewire Software, Inc.*, No. 2011-1486, 2013 WL 4749919, at *8 (Fed. Cir. Sept. 5, 2013) (“simply implementing an abstract concept on a computer, without meaningful limitations to the concept, does not transform a patent-ineligible claim into a patent-eligible one”); *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1287 (Fed. Cir. 2013). (“[A]dding generic computer functions to facilitate performance provides no substantial limitation and therefore is not ‘enough’ to satisfy § 101”); *Bancorp Servs., LLC v. Sun Life Assurance Co. of Canada*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (using a computer for its basic function “fails to circumvent the prohibition against patenting abstract ideas”).

As separate grounds of invalidity, the CBM Petitions also explain that the Challenged Claims fail to satisfy the written description and definiteness

requirements of § 112. *See e.g.*, '850 CBM Petition, **Exhibit 1**, at 21. These invalidity grounds are identified below:

- Ameranth claimed technology that it did not invent and that is not disclosed in the specifications of the Patents-in-Suit. Because there is no support to establish that Ameranth was in possession of the full scope of the claimed subject matter as interpreted by Ameranth, the Challenged Claims do not meet the written description requirement.
- Because they claim a system that includes a method step, the Challenged Claims are invalid for failing to meet the definiteness requirement. *See IPXL Holdings, LLC v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005) (citing M.P.E.P. § 2173.05(p)(II)); *Rembrandt Data Techs., LP v. AOL, LLC*, 641 F.3d 1331, 1339 (Fed. Cir. 2011) (affirming summary judgment of invalidity for indefiniteness where apparatus claims recited the step of transmitting). An accused infringer cannot determine whether the Challenged Claims are infringed when the claimed system is supplied or when a user performs the method steps in the claims. *IPXL Holdings*, 430 F.3d at 1384 (“[I]t is unclear whether infringement of claim 25 occurs when one creates a system that allows the user to change the predicted transaction information or accept the displayed transaction, or whether infringement occurs when the user actually uses the input means to change transaction information or uses the input means to accept a displayed transaction.”); *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1318 (Fed. Cir. 2011) (“Katz’s claims . . . create confusion as to when direct infringement occurs because they are directed both to systems and to actions performed by ‘individual callers.’”).

1 *See e.g.*, '850 CBM Petition, **Exhibit 1**, at 42-43.

2 **III. LEGAL STANDARD**

3 Section 18(b)(1) of the AIA sets forth four factors to consider in determining
4 whether to grant a stay pending CBM review:

- 5 1. Whether a stay, or the denial thereof, will simplify the issues in
6 question and streamline the trial;
- 7 2. Whether discovery is complete and whether a trial date has been
8 set;
- 9 3. Whether a stay, or denial thereof, would unduly prejudice the
10 nonmoving party or present a clear tactical advantage for the
11 moving party; and
- 12 4. Whether a stay, or the denial thereof, will reduce the burden of
13 litigation on the parties and on the court.

14 In addition to the first three factors, which traditionally have been considered
15 by courts in deciding whether to stay a case, Congress included the additional
16 fourth factor to place “a very heavy thumb on the scale in favor of a stay being
17 granted.” *Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 3 (citing 157
18 CONG. REC. S1363) (**Exhibit 9**); *see also Market-Alerts*, 2013 U.S. Dist. LEXIS
19 15300, at *7 (“This additional [factor] was included, in part, to ease the movant’s
20 task of demonstrating the need for a stay.”). Therefore, courts have considered the
21 fourth factor in light of the suggestion that it was enacted to increase the likelihood
22 that a stay would be granted. *See Sightsound*, 2013 U.S. Dist. LEXIS 79319, at
23 *10.

24 A stay is available the moment a CBM petition is filed. The AIA states that
25 “[i]f a party seeks a stay of a civil action . . . relating to a transitional proceeding for
26 that patent, the court shall decide whether to enter a stay.” AIA § 18(b)(1). The
27 USPTO has recognized that “the proceedings begin with the filing of a petition.”
28 Office Patent Trial Practice Guide, 77 Fed. Reg. 48,757 (**Exhibit 14**). Therefore,
the stay provisions apply when a CBM petition is first filed. *See Market-Alerts*,

2013 U.S. Dist. LEXIS 15300, at *7 n.5. In general, courts have chosen to stay cases before the PTAB rules on a CBM petition. *See, e.g., Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 3–4; *Market-Alerts*, 2013 U.S. Dist. LEXIS 15300, at *7 n.5, *30; *Sightsound*, 2013 U.S. Dist. LEXIS 79319, at *10–11. Accordingly, this Court is not required to consider the merits of the Petitioning Defendants’ CBM petitions in order to grant a stay. *See Sightsound*, 2013 U.S. Dist. LEXIS 79319, at *5 & n.1 (granting a stay while declining to speculate about the likelihood of success of a CBM petition).

IV. ARGUMENT

Each of the four factors for determining whether to grant a stay pending CBM review strongly weighs in favor of staying this case.

A. A Stay Will Inevitably Simplify Or Eliminate Issues For The Court And The Parties.

There is a high likelihood that the USPTO will invalidate or significantly amend the claims of the ’850, ’325, ’733, and ’077 Patents, and that such an outcome will terminate or simplify this litigation. The Petitioning Defendants’ CBM petitions challenge the validity of every claim of the Patents-in-Suit in this case. *See* ’850, ’325, ’733, and ’077 CBM Petitions, **Exhibits 1, 3-5**. Simplification of the issues by the CBM review is therefore guaranteed. If the PTAB ultimately declares all of the claims invalid, this case will be resolved entirely. *See Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 3 (“[A] stay in this case might not only streamline the trial, it might resolve the case entirely.”) (**Exhibit 9**). And “[e]ven if only some claims are ultimately held invalid, the number of asserted claims in this case will necessarily decrease and the issues for trial will be simplified.” *Id.* at slip op. at 4.

The fact that the PTAB has not yet granted CBM review does not weigh against a stay. *See Zillow, Inc.*, No. C12-1549JLR, 2013 U.S. Dist. LEXIS 144919

(granting stay even though the USPTO had not yet granted CBM review); *see also* *Market-Alerts*, 2013 U.S. Dist. LEXIS 15300, at *7 n.5, *30; *Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 3–4 (**Exhibit 9**). As discussed above, it is likely that the PTAB will grant review of the '850, '325, '733, and '077 Patents. And if a CBM review is granted, the “necessary prerequisite finding . . . suggests at least some claims will be held invalid even if the [patent is] ultimately sent back for trial.” *Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 4 (**Exhibit 9**). However, even if the Petitioning Defendants’ CBM petitions are denied and the PTAB does not grant review, issues in this case are likely to be simplified. The PTAB typically provides a detailed patentability analysis in granting or denying CBM petitions. *See SAP America, Inc. v. Versata Dev. Group, Inc.*, No. CBM2012-00001, Paper 36, slip op. 29–31, 36–42 (PTAB January 9, 2013) (**Exhibit 15**). Such an analysis from “specialized experts will refine the issues and create a record that would inform, assist, and expedite any subsequent litigation.” *See Progressive*, 2013 U.S. Dist. LEXIS 54899, at *26.

For all of the above reasons, the first factor strongly favors a stay.

B. This Case Is Still At An Early Stage.

Section 18(b)(1) of the AIA specifically states that the Court should consider “whether discovery is complete and whether a trial date has been set.” AIA § 18(b)(1). Here, the case has not progressed to a point that a stay of the litigation is inappropriate. The Defendants’ invalidity contentions are not due until March 31, 2014, and no depositions have taken place. And as noted above, Defendants have not yet received infringement contentions that comply with the Local Rules. *See In re: Ameranth Patent Litigation Cases*, No. 3:11-cv-01810-DMS-WVG, ECF No. 513 (S.D. Cal. Oct. 10, 2013) (Sabraw, J.). The claim construction hearing is not scheduled until November 3, 2014, and the Court has not set a trial date yet. Furthermore, fact discovery is far from complete, and the deadline to complete

claim construction related discovery is not until August 18, 2014. The Court has not set a deadline to complete fact discovery, and all non-claim construction discovery remains stayed through the Markman hearing. *See Ameranth, Inc. v. Pizza Hut, Inc.; Et Al.*, No. 3:11-cv-01810-DMS-WVG, ECF No. 468 (S.D. Cal. Aug. 29, 2013) (Gallo, J.). Consequently, much of the work involved in the claim construction analysis lies ahead for the parties and the Court. *See Tierravision, Inc. v. Google, Inc.*, No. 3:11-cv-02170-DMS-BGS, ECF No. 39 (S.D. Cal. Feb. 21, 2012) (Sabraw, J.) (**Exhibit 16**); *see also EchoStar Techs. Corp. v. Tivo, Inc.*, No. 5:05-cv-81, 2006 U.S. Dist. LEXIS 48431, at *10 (E.D. Tex. July, 14 2006) (granting a stay when “[d]iscovery is not yet completed, summary judgment motions have not been filed, and the Court has not completed its claim construction”).

Courts have stayed cases pending CBM review in far later stages than the instant case. For example, one court stayed a case pending CBM review after claim construction had occurred. *Sightsound*, 2013 U.S. Dist. LEXIS 79319, at *7–8 (staying the case even though the litigation had “reached a relatively late stage”). Similarly, a court stayed a case pending CBM review after the parties had exchanged infringement, non-infringement, and invalidity contentions, and after the parties filed their joint claim construction and prehearing statement. *See Zillow Inc.*, 2013 WL 5530573 at *1. Here, the claim construction hearing is not scheduled to take place until over a year from now.

Thus, the second factor weighs heavily in favor of a stay.

C. A Stay Will Not Unduly Prejudice Ameranth Or Afford The Defendants A Clear Tactical Advantage.

Courts have considered several factors in determining whether prejudice is undue, including the timing of the motion, the timing of the administrative review request, the status of the review proceedings, and the relationship between the

1 parties. *See Market-Alerts*, 2013 U.S. Dist. LEXIS 15300, at *23–24; *Sightsound*,
2 2013 U.S. Dist. LEXIS 79319, at *8–9.

3 Regarding the timing-related factors, this motion is being filed within six
4 days of the Petitioning Defendants filing their CBM petitions with the PTAB.
5 Additionally, the Petitioning Defendants have previously advised Ameranth and the
6 Court of their intent to file both the CBM Petitions and the motion for a stay. This
7 comes as no surprise to Ameranth. Moreover, as previously discussed, CBM
8 review proceedings are governed by a strict timeline. Office Patent Trial Practice
9 Guide, 77 Fed. Reg., Vol. 77, No. 157 at 48,756, 48,757, 48,765 (**Exhibit 14**). The
10 PTAB will promptly determine whether to grant review of the '850, '325, '733, and
11 '077 Patents, and if the PTAB grants review, the review will necessarily conclude
12 within one year of the decision granting the review. *Id.* at 48,765; *Progressive*,
13 2013 U.S. Dist. LEXIS 54899, at *26 (“The PTAB is likely to decide the issues . . .
14 well in advance of the Court . . .”). Any alleged prejudice arising from the timing
15 of the CBM review is substantially outweighed by the probable simplification of
16 issues for this Court.

17 Regarding the relationship of the parties, Ameranth is not a direct competitor
18 of any of the Defendants. *See SenoRx, Inc. v. Hologic, Inc.*, No. CIV. A. 12-173-
19 LPS-CJB, 2013 U.S. Dist. LEXIS 8044, at *28 (D. Del. Jan. 11, 2013) (recognizing
20 that delay in a case for direct competitors may cause prejudice). Ameranth no
21 longer practices the alleged inventions of the Patents-in-Suit. Ameranth has
22 previously admitted that its products that practiced one or more claims of the
23 Patents-in-Suit are not “currently offer[ed] for sale, and have not been offered for
24 sale for many years...” Ameranth’s Response to Defendants’ Interrogatory No. 1,
25 **Exhibit 17**, at 4. With the possible exception of the Ameranth Poker Room
26 Manager and Ameranth Poker Tournament Manager, which are poker management
27 products, Ameranth is solely in the business of patent enforcement, making it a
28

1 non-practicing entity with respect to all aspects of the hospitality industry. *See*
2 Ameranth Product Web Page (**Exhibit 13**). To the extent Ameranth's poker
3 management products are patented, they relate to patents unrelated to the Patents-
4 in-Suit. *Id.*

5 Because Ameranth is not a direct competitor and no longer practices the
6 alleged inventions of the Patents-in-Suit, Ameranth cannot be concerned with loss
7 of market share or erosion of goodwill. *See id*; *Microline, LLC v. Intel Corp.*, No.
8 2:07-cv-488, 2010 U.S. Dist. LEXIS 99255 (E.D. Tex. Sept. 20, 2010) (explaining
9 that a stay would not unduly prejudice the plaintiff because it "does not
10 manufacture or sell any products, or otherwise practice the patent" such that "there
11 is no risk of customer losses or of injury to market share during a stay"). Therefore,
12 the relationship of the parties and Ameranth's status as a non-practicing entity
13 weigh in favor of a stay. *See Market-Alerts*, 2013 U.S. Dist. LEXIS 15300, at *27
14 ("The potential for excessive prejudice is reduced by the fact that the parties do not
15 directly compete with each other, and there is no evidence of dilatory motive on the
16 part of the defendants.").

17 Any alleged prejudice resulting from the loss of a chosen forum, witnesses'
18 memories fading, or any negative impact on licensing should not weigh against a
19 stay. Each of these concerns is present in every motion to stay, notwithstanding the
20 timing of filing or the length of the stay. Yet Congress still chose to include a stay
21 provision in the AIA, stating that it was "nearly impossible" to imagine a scenario
22 in which a district court would not issue a stay pending CBM review. *See* 157
23 CONG. REC. S1053. (**Exhibit 7**).

24 For these reasons, the third factor strongly favors a stay.

25 **D. A Stay Will Reduce The Burden Of Litigation On The Parties And**
26 **The Court.**

27 Granting a stay will unquestionably reduce the burden on the parties and the
28

1 Court. *See Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip op. at 3 (**Exhibit 9**).
2 Congress incorporated this additional factor to increase the likelihood that courts
3 will stay litigation in view of CBM review proceedings. *Versata Software, Inc.*,
4 No. 1:12-cv-00893-SS, slip op. at 3 (citing 157 CONG. REC. S1363) (**Exhibit 9**);
5 *see also Market-Alerts*, 2013 U.S. Dist. LEXIS 15300, at *27 (“It appears that the
6 intent of this provision was to ensure that district courts would grant stays pending
7 CBM review proceedings at a higher rate than they have allowed stays pending ex
8 parte reexaminations.”); *Sightsound*, 2013 U.S. Dist. LEXIS 79319, at *10 (“[The
9 court considers] this factor in light of the suggestion that it was enacted in order to
10 increase the likelihood that a stay would be granted.”).

11 First, if the stay is granted, the parties and the Court will not be burdened by
12 litigating issues that CBM review may render moot. Because this case is still in its
13 early stages, the parties face significant financial and time investments. If this case
14 proceeds, the parties will continue with discovery and will eventually prepare claim
15 construction briefs and expert reports. Furthermore, the parties and the Court may
16 waste resources litigating patent claims that the PTAB ultimately cancels in the
17 CBM review, or claims that may be amended by Ameranth during the review.

18 Additionally, if a stay is denied, this Court will inevitably spend resources
19 deciding substantive issues (and the discovery disputes which may accompany
20 same) that CBM review may render moot. For example, as one court observed, the
21 court and the PTAB will ultimately apply different claim construction standards,
22 and the court’s efforts in construing the claims “may go to waste or be duplicative
23 of the PTAB’s own findings.” *Versata Software, Inc.*, No. 1:12-cv-00893-SS, slip
24 op. at 5. (**Exhibit 9**).

25 For these reasons, the fourth factor strongly favors a stay. To date, the PTAB
26 has instituted a trial in response to fifteen of the nineteen CBM petitions that it has
27 considered, including granting review for six of the seven petitions on § 101

grounds.⁸

V. CONCLUSION AND RELIEF REQUESTED

Defendants respectfully request that the Court promptly grant the Defendants' motion to stay until the PTAB resolves the pending CBM review of the '850, '325, '077, and '733 Patents.

⁸ See *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2012-00003, Paper 15 (PTAB February 12, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2012-00004, Paper 10 (PTAB January 25, 2013); *CRS Advanced Techs., Inc. v. Frontline Techs., Inc.*, No. CBM2012-00005, Paper 34 (PTAB February 19, 2013) (deciding request for rehearing); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2012-00010, Paper 16 (PTAB February 25, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2012-00011, Paper 12 (PTAB February 25, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2013-00001, Paper 13 (PTAB February 27, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2013-00002, Paper 12 (PTAB February 27, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2013-00003, Paper 11 (PTAB March 15, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2013-00004, Paper 11 (PTAB March 15, 2013); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2013-00009, Paper 10 (PTAB March 28, 2013); *Bloomberg v. Markets-Alert Pty Ltd.*, No. CBM2013-00005, Paper 18 (PTAB March 29, 2013); *Meridianlink, Inc. v. DH Holdings, LLC*, No. CBM2013-00008, Paper 20 (PTAB June 24, 2013) (granted on § 101 ground) (**Exhibit 18**); *SAP America, Inc. v. Pi-Net Int'l, Inc.*, No. CBM2013-00013, Paper 15 (PTAB September 19, 2013) (granted on § 101 ground) (**Exhibit 19**); *U.S. Bancorp v. Ret. Capital Access Mgmt. Co.*, No. CBM2013-00014, Paper 12 (PTAB September 20, 2013) (granted on §101 ground) (**Exhibit 20**); *Apple Inc. v. Sightsound Techs., LLC*, No. CBM2013-00019, Paper 17 (PTAB October 8, 2013); *SAP America, Inc. v. Versata Dev. Group, Inc.*, No. CBM2012-00001, Paper 36 (PTAB January 9, 2013) (granted on § 101 ground) (**Exhibit 15**); *CRS Advanced Techs., Inc. v. Frontline Techs., Inc.*, No. CBM2012-00005, Paper 17 (PTAB January 23, 2013) (granted on § 101 ground) (**Exhibit 21**); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2012-00002, Paper 10 (PTAB January 25, 2013); *Interthinx, Inc. v. Corelogic Solutions, LLC*, No. CBM2012-00007, Paper 15 (PTAB January 31, 2013) (granted on § 101 ground) (**Exhibit 22**).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: October 22, 2013

JOHN A. O'MALLEY
DAN D. DAVISON
MARC L. DELFLACHE
RICHARD S. ZEMBEK

FULBRIGHT & JAWORSKI LLP

By /s/ Richard S. Zembek
RICHARD S. ZEMBEK

Attorneys for Defendants, **PAPA JOHN'S
USA, INC., EXPEDIA, INC.,
FANDANGO, INC., HOTEL
TONIGHT, INC., HOTELS.COM, L.P.,
HOTWIRE, INC., KAYAK
SOFTWARE CORPORATION, LIVE
NATION ENTERTAINMENT, INC.,
MICROS SYSTEMS, INC., ORBITZ,
LLC, STUBHUB, INC.,
TICKETMASTER, LLC,
TRAVELOCITY.COM LP,
WANDERSPOT LLC, AND
OPENTABLE, INC.**

1 Date: October 22, 2013

LAURA BETH MILLER
DAVID P. LINDNER
JOSEPH S. HANASZ
ANGELA K. HSIEH
JAMES G. DEROUIN

BRINKS GILSON & LIONE

GERALD P. SCHNEEWEIS
ANDREW R. CHIVINSKI

MORRIS POLICH & PURDY LLP

By s/ Laura Beth Miller
LAURA BETH MILLER

Attorneys for Defendant,
HYATT CORPORATION

15 Date: October 22, 2013

GEORGE C. YU

SCHIFF HARDIN LLP

By s/ George C. Yu
GEORGE C. YU

Attorney for Defendant,
QUIKORDER, INC.

1 Date: October 22, 2013

NICK G. SAROS

2 **JENNER & BLOCK LLP**

3
4 By s/ Nick G. Saros

5 NICK SAROS

6 Attorney for Defendants,

7 **MARRIOTT INTERNATIONAL, INC.**

8
9 Date: October 22, 2013

MICHAEL H. PAGE

10 SONALI D. MAITRA

11 **DURIE TANGRI LLP**

12 By s/ Michael H. Page

13 MICHAEL H. PAGE

14 Attorneys for Defendant,

15 **TICKETFLY, INC.**

16
17 Date: October 22, 2013

JOEL T. BERES

18 **STITES & HARBISON, PLLC**

19
20 By s/ Joel T. Beres

21 JOEL T. BERES

22 Attorney for Defendants,

23 **PIZZA HUT OF AMERICA, INC., AND**
24 **PIZZA HUT, INC.**

1 Date: October 22, 2013

DAVID M. STEIN
EMILY C. JOHNSON
KELLIE M. JOHNSON

4 **AKIN GUMP STRAUSS HAUER &
FELD LLP**

6 By s/ David M. Stein
7 DAVID M. STEIN

8 Attorneys for Defendants,
9 **HILTON RESORTS CORPORATION,**
10 **HILTON WORLDWIDE, INC., AND**
11 **HILTON INTERNATIONAL CO.**

12 Date: October 22, 2013

BRIAN S. INAMINE
PHILIP J. BONOLI

14 **LECLAIRRYAN, A PROFESSIONAL
15 ORGANIZATION**

16 By s/ Brian S. Inamine
17 BRIAN S. INAMINE

18 Attorneys for Defendant,
19 **USABLENET INC.**

1 Date: October 22, 2013

ANTHONY NIMMO
BRIAN J. LUM
NICHOLAS MERKER

4 **ICE MILLER LLP**

6 By s/ Anthony Nimmo
ANTHONY NIMMO

8 Attorneys for Defendant,
9 **AGILYSYS, INC.**

10 Date: October 22, 2013

J. RICK TACHE
SHAUN A. HOTING
ERIKSON C. SQUIER
JENNY S. KIM

14 **GREENBERG TRAURIG, LLP**

16 By s/ J. Rick Taché
J. RICK TACHE

18 Attorneys for Defendant,
19 **BEST WESTERN INTERNATIONAL,**
20 **INC.**

1 Date: October 22, 2013

J. RICK TACHE
SHAUN A. HOTING
ERIKSON C. SQUIER
JENNY S. KIM
ROSS SPENCER GARSSON

GREENBERG TRAURIG, LLP

7 By s/ J. Rick Taché
8 J. RICK TACHE

9 Attorneys for Defendant,
10 **ATX INNOVATION, INC. D/B/A**
11 **TABBEDOUT**

12 Date: October 22, 2013

MATTHEW C. BERNSTEIN
YUN LOUISE LU
PATRICK J. MCKEEVER

PERKINS COIE LLP

16 By s/ Matthew C. Bernstein
17 MATTHEW C. BERNSTEIN

18 Attorneys for Defendant and Counterclaim-
19 Plaintiff,
20 **STARBUCKS CORPORATION**

1 Date: October 22, 2013

IAN A. STEWART
KELLY VAN NORT

3 **WILSON ELSER MOSKOWITZ**
4 **EDELMAN & DICKER LLP**

5 By /s/ Ian A. Stewart
6 IAN A. STEWART

7 Attorneys for Defendant,
8 **ORDR.IN, INC.**

9
10 Date: October 22, 2013

FRANK A. ANGILERI
THOMAS W. CUNNINGHAM
MARK A. JOTANOVIC

12 **BROOKS KUSHMAN P.C.**

14 STEPHEN S. KORNICZKY
REBECCA S. ROBERTS

16 **SHEPPARD, MULLIN, RICHTER &**
17 **HAMPTON LLP**

18 By s/ Thomas W. Cunningham
19 THOMAS W. CUNNINGHAM

20 Attorneys for Defendants,
21 **DOMINO'S PIZZA, LLC AND**
22 **DOMINO'S PIZZA, INC.**

1 Date: October 22, 2013

TIMOTHY S. TETER
LOWELL D. MEAD
JOSE R. RODRIGUEZ

4 **COOLEY LLP**

5 By s/ Lowell D. Mead
6 LOWELL D. MEAD

7 Attorneys for Defendant, **MOBO**
8 **SYSTEMS, INC. A/K/A OLO A/K/A**
9 **OLO ONLINE ORDERING**

10 Date: October 22, 2013

ROBERT C. SCHEINFELD
ELIOT D. WILLIAMS
ERIC J. FARAGI

13 **BAKER BOTTS L.L.P.**

14 By s/ Eric J. Faragi
15 ERIC J. FARAGI

16 Attorneys for Defendant, **SEAMLESS**
17 **NORTH AMERICA, LLC**

18
19 Date: October 22, 2013

BRIAN J. DUNNE
MATT OLAVI

21 **OLAVI DUNNE LLP**

22
23 By s/ Brian J. Dunne
24 BRIAN J. DUNNE

25 Attorneys for Defendant,
26 **TICKETBISCUIT, LLC**

1 Date: October 22, 2013

KONRAD SHERINIAN

2 **LAW OFFICES OF KONRAD**
3 **SHERINIAN**

4 DAVID LESHT

5 **LAW OFFICES OF EUGENE M.**
6 **CUMMINGS P.C.**

7 LESLEY W. ROBERTSON

8 **ROBERTS & ASSOCIATES, APC**

9 WILLIAM J. CALDARELLI

10 **CALDARELLI HEJMANOWSKI &**
11 **PAGE LLP**

12 By s/ Konrad Sherinian

13 KONRAD SHERINIAN

14 Attorneys for Defendant, **GRUBHUB,**
15 **INC.**

16
17
18
19 Dated: October 22, 2013

JOHN GUARAGNA

20 JESSE HINDMAN

21 ROB WILLIAMS

22 **DLA PIPER LLP (US)**

23 By s/ Jesse Hindman

24 JESSE HINDMAN

25 Attorneys for Defendant, **STARWOOD**
26 **HOTELS & RESORTS WORLDWIDE,**
27 **INC.**

1 Dated: October 22, 2013

MARK D. FOWLER
ERIN P. GIBSON
JESSE HINDMAN
ROB WILLIAMS

DLA PIPER LLP (US)

By s/ Erin P. Gibson
ERIN P. GIBSON

Attorneys for Defendant, **APPLE INC.**

9 Dated: October 22, 2013

ERIN P. GIBSON
JESSE HINDMAN
ROB WILLIAMS

DLA PIPER LLP (US)

By s/ Erin P. Gibson
ERIN P. GIBSON

Attorneys for Defendant, **EVENTBRITE, INC.**

17 Date: October 22, 2013

ARTHUR P. LICYGIEWICZ
THOMPSON HINE LLP

DEAN T. JANIS
JANIS LAW GROUP, APC

By s/ Arthur P. Licygiewicz
ARTHUR P. LICYGIEWICZ

Attorneys for Defendant,
O-WEB TECHNOLOGIES LTD.

CERTIFICATION OF SIGNATURES

The undersigned hereby certifies, pursuant to this Court's Electronic Case Filing Administrative Policies and Procedures Manual § 2(f)(4), that the content of this document is acceptable to Laura Beth Miller, Counsel for HYATT CORPORATION; George C. Yu, Counsel for QUIKORDER, INC.; Nick G. Saros, Counsel for MARRIOTT INTERNATIONAL, INC., ET AL.; Michael H. Page, Counsel for TICKETFLY, INC.; Joel T. Beres, Counsel for PIZZA HUT OF AMERICA, INC., AND PIZZA HUT, INC.; David M. Stein, Counsel for HILTON RESORTS CORPORATION, HILTON WORLDWIDE, INC., AND HILTON INTERNATIONAL CO.; Brian S. Inamine, Counsel for USABLENET INC.; Anthony Nimmo, Counsel for AGILYSYS, INC.; J. Rick Taché, Counsel for ATX INNOVATION, INC. D/B/A TABBEDOUT; J. Rick Taché, Counsel for BEST WESTERN INTERNATIONAL, INC.; Matthew C. Bernstein, Counsel for STARBUCKS CORPORATION; Ian A. Stewart, Counsel for ORDR.IN, INC.; Thomas W. Cunningham, Counsel for DOMINO'S PIZZA, LLC AND DOMINO'S PIZZA, INC.; Lowell D. Mead, Counsel for MOBO SYSTEMS, INC. A/K/A OLO A/K/A OLO ONLINE ORDERING; Eric J. Faragi, Counsel for SEAMLESS NORTH AMERICA, LLC; Brian J. Dunne, Counsel for TICKETBISCUIT, LLC; Konrad Sherinian, Counsel for GRUBHUB, INC.; Jesse Hindman, Counsel for STARWOOD HOTELS & RESORTS WORLDWIDE, INC.; Erin P. Gibson, Counsel for APPLE, INC.; ERIN P. GIBSON, Counsel for EVENTBRITE, INC.; and ARTHUR P. LICYGIEWICZ, Counsel for O-WEB TECHNOLOGIES LTD., and that I have obtained their authorizations to affix their electronic signatures to this document.

By /s/ Richard S. Zembek
Richard S. Zembek

Attorneys for Defendants PAPA JOHN'S USA, INC., EXPEDIA, INC., FANDANGO, INC., HOTEL TONIGHT, INC., HOTELS.COM, L.P., HOTWIRE, INC., KAYAK SOFTWARE CORPORATION, LIVE NATION ENTERTAINMENT, INC., MICROSYSTEMS, INC., ORBITZ, LLC, STUBHUB, INC., TICKETMASTER, LLC, TRAVELOCITY.COM LP, WANDERSPOT LLC, AND OPENTABLE, INC.

Email:
richard.zembek@nortonrosefulbright.com

53033132.23